



March 27, 2000

Mr. Frank J. Garza
City Attorney
City of San Antonio
P O Box 839966
San Antonio, Texas 78283-3966

OR2000-1195

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133310.

The City of San Antonio (the "city") received a request for the city's Municipal Integrity Division investigations. You state that the city will release some of the requested information to the requestor.¹ However, you claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state that the city's Municipal Integrity Division conducts investigations which result from complaints of alleged misconduct by city employees. You inform us that a full-time city police officer is assigned to the Municipal Integrity Division to assist with all investigations and to determine whether criminal activity has occurred. You further state that some of the investigations involving criminal activity are referred to the San Antonio Police Department or the Bexar County District Attorney for disposition.

You have submitted five Municipal Integrity Division investigative reports for review which you wish to withhold from disclosure under section 552.108. Section 552.108 in pertinent part, excepts from required public disclosure:

¹We note that the city represents that the requestor has agreed to accept approximately 20 Municipal Integrity Division investigation reports with the names of the complainants and witnesses redacted. The city states that if the requestor desires the redacted information at a later date, the city will seek a decision from this office as to the confidentiality of the information under section 552.101.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

You claim that the city seeks to withhold the Municipal Integrity Division investigative reports marked as report numbers 2 and 5 under section 552.108(a)(1) because the release of the information in these reports could interfere with the pending crime investigations. The city also wishes to withhold from disclosure the Municipal Integrity Division investigative reports marked as report numbers 1, 3 and 4 under section 552.108(a)(2) because the investigations are no longer pending and did not result in convictions or deferred adjudications. We conclude that the city has established the applicability of section 552.108(a)(1) to report numbers 2 and 5 and section 552.108(a)(2) to report numbers 1, 3 and 4. The city may, therefore, withhold most of the requested information at this time pursuant to section 552.108.

Section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. Thus, with the exception of the basic front page offense and arrest report information, you may withhold the requested information from disclosure based on section 552.108.²

The city attempts to preserve arguments under section 552.101 in conjunction with the "informer's privilege." However, it is unclear whether the city intends to raise this exception with regard to the five Municipal Integrity Division investigative reports at issue. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); Open Records Decision Nos. 582 (1990), 515 (1988). The informer's privilege does not categorically protect from release the identification and description of a complainant, which is front page offense report

²The city does have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

information generally considered public by *Houston Chronicle*. See Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 187 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). The identity of a complainant, whether an "informant" or not, may only be withheld upon a showing that special circumstances exist. See, e.g., Open Records Decision Nos. 366 (1983), 333 (1982). You have not shown special circumstances sufficient to overcome the presumption of public access to the complainants' and witnesses' identities in the five Municipal Integrity Division investigative reports. Thus, you may not withhold this information from disclosure under the informer's privilege.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

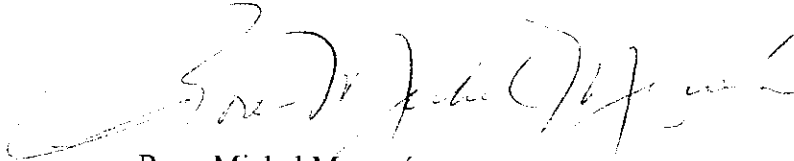
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose-Michel Munguía", written over a horizontal line.

Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 133310

Encl. Submitted documents

cc: Mr. Brain Collister
KMOL-TV
1031 Navarro Street
San Antonio, Texas 78205

(w/o enclosures)